



2024:DHC:9585



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision : 09.12.2024

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O.M.P.(I) (COMM.) 411/2024, I.A. No. 47059/2024, 47061/2024**M/S COMBITIC GLOBAL CAPLET PVT LTD****.....Petitioner**

Through: Mr. Sacchin Puri (Sr. Adv.) along
with Mr. Vikas Deep, Mr. Sonu
Kumar, Ms. Ashna Bhola, Mr.
Fardeen Khan, Ms. Nidhi Jain, Advs.

versus**M/S AMBIKA REALCON DEVELOPERS PVT LTDRespondent**

Through: Mr. Puneet Bali (Sr. Adv) along with
Mr. Aditya Soni, Mr. Rajat Gautam,
Mr. Divyan Shrivastava, Mr. S.S.
Shekhawat, Advs.

CORAM:**HON'BLE MR. JUSTICE SACHIN DATTA****SACHIN DATTA, J. (Oral)**

1. The present petition has been filed under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter 'the A&C Act') seeking urgent interim orders, in the context of an agreement dated 30.01.2019 [amended by 'superseding agreement' dated 18.07.2020].

2. It is stated that in terms of the said agreement, the petitioner is entitled to consideration, with an absolute right, title and interest in the 'net surplus' in the ratio prescribed therein. Disputes between the parties have arisen since the petitioner has not been given its alleged entitlement under the agreement, including the 'net surplus' in the ratio as prescribed in the agreement.



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3. Learned senior counsel for the respondent strongly refutes the interpretation sought to be accorded by the petitioner to the agreement in question ; he submits that the entitlement of the petitioner would arise only after the entire project is over and all the units are sold.

4. The parties are clearly at variance as to the manner in which the contract is to be construed and implemented. Admittedly however, the agreement between the parties contains an arbitration clause as under:-

“That in the event of any disputes arising under, in connection with, incidental to and/or in interpretation of scope of this Agreement or relating thereto, or any Agreement that may follow, the parties shall try to resolve the same amicably failing which the same shall be referred to any arbitrator to be appointed mutually by the Parties and its decision shall be final and conclusive. The provisions of Arbitration and Conciliation Act 1996 and the statutory modifications/ amendments and/or re-enactment thereof from time to time shall apply to such arbitration. The place of arbitration shall be Delhi and the parties bear and pay their own costs, charges and expenses of the proceedings of Arbitration.”

5. Respective counsel for the parties are in agreement and jointly request that an independent Sole Arbitrator be appointed by this Court in these proceedings itself to adjudicate the disputes between the parties.

6. Accordingly, as jointly prayed, Ms. Justice (Retd.) Hima Kohli, Former Judge, Supreme Court of India, (Mob. No.: +91 9871300036) be appointed as the Sole Arbitrator to adjudicate the disputes between the parties.

7. The respondent shall be entitled to raise preliminary objections as regards jurisdiction/arbitrability, which shall be decided by the learned arbitrator, in accordance with law.

8. The learned Sole Arbitrator may proceed with the arbitration proceedings subject to furnishing to the parties the requisite disclosures as



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required under Section 12 of the A&C Act.

9. The learned Sole Arbitrator shall fix her fees in consultation with the parties.

10. All rights and contentions of the parties in relation to the claims/counter-claims are kept open, to be decided by the learned Arbitrator on their merits, in accordance with law.

11. Considering that the Arbitral Tribunal stands constituted in terms of the aforesaid direction, it would be apposite if the present petition is directed to be dealt with by the learned Sole Arbitrator under Section 17 of the A&C Act. It is directed accordingly.

12. It is made clear that this order shall not be construed as an expression of opinion of this Court as to the merits of the controversy sought to be raised by the petitioner and/or the interim relief/s sought by the petitioner.

13. All rights and contentions of the parties are reserved.

14. The present petition stands disposed of in the above terms. All pending applications also stand disposed of.

SACHIN DATTA, J

DECEMBER 9, 2024/uk